

**Agency Operating and Funding Agreement for  
Continuing Participation in the Efficient Transportation Decision Making and  
Transportation Project Development Processes**

**between**

**United States Army Corps of Engineers**

**and**

**Florida Department of Transportation**

**December 2021**

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## Section 1. Introduction

The purpose of the Efficient Transportation Decision Making (ETDM) process is to provide early incorporation of environmental considerations in transportation planning to better inform project delivery. This process supports the environmental policy of the Florida Department of Transportation (FDOT) “to protect and preserve the quality of life, and the natural, physical, social and cultural resources of the State, while expeditiously developing safe, cost effective, and efficient transportation systems.” (Policy No.: 000-625-001-m). The ETDM process supports environmental review efficiency objectives identified in Sections 135 and 139 of Title 23 United States Code (U.S.C.), as amended. The ETDM process promotes coordination of transportation and environmental resource planning and supports environmental reviews, through early interaction among transportation planners; federal, state, and local agencies; Native American Tribes; and affected communities. Florida established the ETDM process on December 14, 2001, through entry into a Memorandum of Understanding with state and federal resource agencies. These entities endorsed the ETDM concept and agreed to support, establish, and implement the ETDM process at their respective agencies to the extent feasible within existing legal authority and commensurate with the level of available funding. Intergovernmental coordination is accomplished through Environmental Technical Advisory Teams (ETATs). Each ETAT includes representatives from Metropolitan Planning Organizations (MPOs), federal and state agencies, and participating Native American Tribes.

The ETDM process described in this Agency Operating and Funding Agreement (AOFA or Agreement) is consistent with the FDOT’s ETDM and Project Development and Environment (PD&E) Manuals. As shown in Figure 1, the ETDM process consists of two review screens: Planning and Programming. The screening events apply to qualifying capacity improvement projects, such as new roadways, new rail systems, and bridge projects (ETDM Manual, Chapter 2). The Planning Screen occurs when projects are evaluated for inclusion or prioritization within a Cost Feasible Long-Range Transportation Plan (LRTP). The Programming Screen supports development of projects to be included in the FDOT Five Year Work Program. The results of the screening events link the transportation Planning phase and the PD&E phase. The Planning and Programming Screens help to:

- Assess the feasibility of proposed projects.
- Allow for early identification of potential avoidance, minimization and mitigation opportunities.
- Focus the issues to be addressed during PD&E.
- Create information and documentation which may be advanced into the PD&E phase.

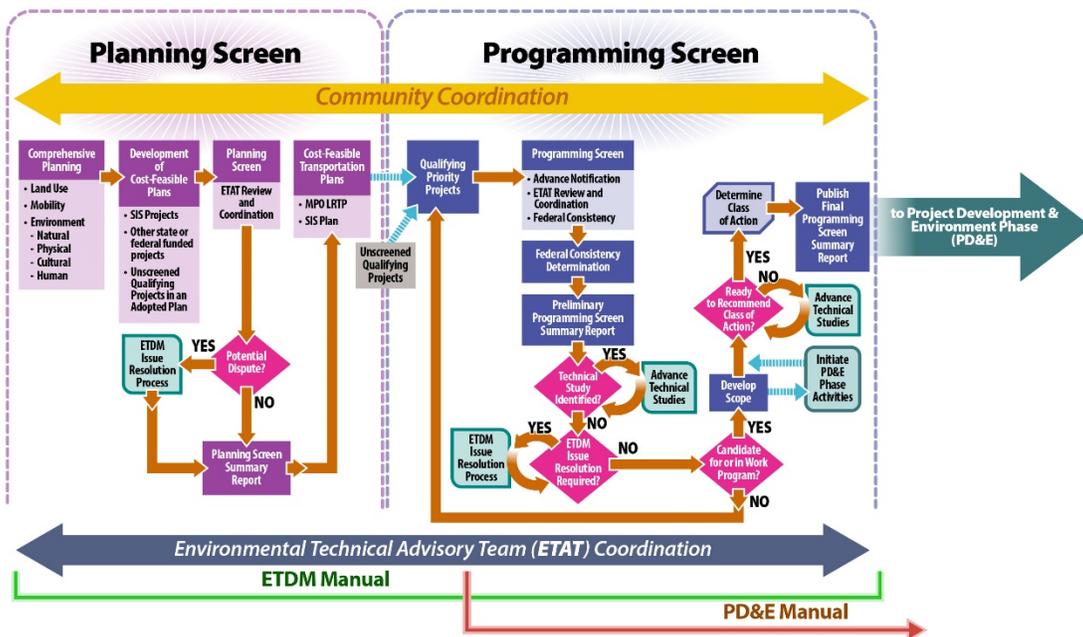


Figure 1 – ETDM Process

During the Planning and Programming Screenings, ETAT members use the Environmental Screening Tool (EST) to review project information, identify potential project effects, and submit comments and considerations to FDOT. This web-based Geographic Information System (GIS) database and mapping tool provides access to information and data about natural, physical, cultural and community resources in a proposed project area. The comments and other information are made available to the public on the ETDM Public Access Site. The EST performs standardized GIS analyses and queries using information supplied by ETAT members and contained in the Florida Geographic Data Library. Moreover, it:

- Integrates data pertinent to natural, physical, cultural, and community resources and transportation programs into a standardized format.
- Analyzes GIS data within project buffers to support ETAT commentary.
- Provides a platform for dissemination of information among ETAT representatives and the public.
- Provides storage and access to ETAT reviews.

In a Memorandum of Understanding (MOU) dated 12/14/2016, Federal Highway Administration (FHWA) assigned and FDOT assumed FHWA's NEPA responsibilities for environmental review, reevaluation, consultation, or other actions required by federal environmental law pertaining to the review or approval of federal highway projects. The responsibilities were assigned under the Surface Transportation Project Delivery Program (NEPA Assignment Program) codified at 23 U.S.C. §327.

In general, FDOT's assumption of FHWA's environmental review responsibilities includes highway projects in Florida whose source of federal funding comes from FHWA or which require FHWA approvals. Under the NEPA Assignment MOU, FDOT serves as the NEPA Lead Agency with responsibility and liability for making applicable environmental decisions on highway projects. Within the ETDM process, FDOT's Office of Environmental Management (OEM) staff performs reviews of the following items and provides approval and/or concurrence at specific milestones:

- Purpose and need
- Methodology Memorandums for the Alternative Corridor Evaluation process
- Alternative Corridor Evaluation Reports
- Elimination of unreasonable alternatives
- Invitations for Participating and Cooperating agencies
- Class of Action (COA) determinations
- Adoption of planning products to be used during the PD&E Study

These early approvals and/or concurrences allow for the identification of potential project effects supporting the streamlining objectives of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation (FAST) Act, codified in 23 U.S.C. § 139.

Under the NEPA Assignment Program FDOT is subject to the same procedural and substantive requirements as previously applied to FHWA. Consistent with Part 3 of the MOU, FHWA retains certain responsibilities, including publication of notices in the Federal Register, government-to-government tribal consultation and the environmental review, consultation, and approval associated with the environmental documents for the I-4 Beyond the Ultimate Project and the Tampa Interstate Study Project. FHWA will continue to review amendments that affect funding and costs for reimbursement eligibility in accordance with Title 23 of the United States Code, including 23 U.S.C. §139(j) and 2 CFR §§ 200.402 – 200.405. Reference to executed NEPA Assignment MOU for additional details.

## **Section 2. Agreement Framework and Regulatory Authority**

This AOFA is entered into voluntarily by FDOT and the United States Army Corps of Engineers (USACE) to provide a framework for participation in the ETDM process and advancement of transportation projects during the Planning and PD&E phases. USACE shall serve as an ETAT member and participate by reviewing and commenting on those resources within its

jurisdictional purview including those cited in Appendix A. Moreover, this AOFA provides funding for USACE's fulfillment of its role as an ETAT representative in the ETDM screenings, project development, and transportation project delivery processes, as defined herein.

### **Section 3. Recitals**

A. FDOT and USACE originally executed a Master Agreement (MA), Agency Operating Agreement (AOA) and Funding Agreement (FAs) on December 9, 2004, followed by additional 5-year agreements on July 1, 2010, and a 5-year AOFA on June 30, 2015, and three no-cost time extensions executed on January 25, 2021, September 24, 2021, and October 27, 2021. FDOT and USACE have consulted and agree to continue participating in the ETDM and transportation project delivery processes.

B. USACE has regulatory jurisdiction over certain activities pursuant to Section 404 of the Clean Water Act of 1972 as amended (Section 404), and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899, as amended (Section 10), and Section 103 of the Marine Resources, Protection and Sanctuaries Act; other applicable law and regulations governing the USACE regulatory program include, but are not limited to, those identified in Appendix A.

C. FDOT is committed to compliance with the statutes and rules under USACE's jurisdiction as they relate to FDOT's transportation projects and activities. As such, FDOT requests that USACE continue providing expedited review and specialized technical assistance during the ETDM and transportation development processes meeting timelines established in this AOFA. Consistent with OMB Circular A-97, FDOT certifies that the services being requested pursuant to this AOFA cannot be procured reasonably and expeditiously by it through ordinary business channels.

D. Early coordination and participation in the ETDM process has increased the number of activities conducted by USACE. FDOT desires that USACE maintain its timely responses and priority review of FDOT projects.

E. USACE has represented that without continued funding it will be unable to provide FDOT with expedited review and specialized technical assistance during the ETDM and transportation development processes.

F. FDOT has found it beneficial to provide funding for USACE to serve as an ETAT representative in order to support priority expedited review and specialized technical assistance so that transportation projects addressing Florida's needs can be implemented timely while complying with applicable environmental laws and regulations, including those protecting coastal and marine species and habitat.

G. In order to receive priority project reviews, FDOT requests that USACE provide expedited review and specialized technical services in its jurisdictional areas. FDOT will reimburse USACE for its services under this AOFA to meet the accelerated review requirements and assistance established in this AOFA.

H. The participation of FDOT and USACE in this AOFA is supported by 23 U.S.C. § 139(j) and the reimbursement of funds from FHWA for activities conducted by USACE pursuant to this AOFA. This assistance is available to both state and federal agencies to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program. USACE has determined that (1) it is authorized pursuant to 23 U.S.C. § 139(j) and Section 1125 of the Water Resources Development Act of 2016, to accept and expend FHWA funds to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes under the jurisdiction of USACE and (2) that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects.

I. The participation of FDOT and USACE in this AOFA is also supported by Section 214 of the Water Resources Development Act of 2000, as amended, which allows USACE accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of USACE. USACE has determined that the service provided is beyond the normal work it performs on federal-aid highway and transportation projects.

J. USACE will provide expedited review and specialized technical assistance consistent with its statutory authority and commensurate with the level of funding provided by FDOT pursuant to this AOFA. USACE's responsibilities are as provided in this AOFA and detailed in part in the Tables. Assistance may include, but is not limited to, application review, field visits, site inspections, and coordination to support permitting activities, training, travel, outreach, programmatic tool development and improvement, acquisition of GIS data, pre-application meetings and participation in the transportation planning process or other early coordination activities.

K. The parties are entering into this AOFA to provide for early coordination and identification of jurisdictional resources, to expedite transportation project review, and to provide for the personnel and/or funding to attain these goals.

NOW, THEREFORE, in consideration of the mutual promises set forth above, the parties agree to the following:

#### **Section 4. Statement of Work**

A. USACE agrees to provide its expertise and assist FDOT by expediting the review and evaluation of transportation projects for those matters within its statutory and regulatory authorities. USACE will meaningfully contribute to expediting and improving permitting and review processes, including planning, approval and consultation processes, for FDOT's federal-aid highway program projects. In providing technical assistance, USACE will:

- Identify resources of concern and provide focused comments and actionable recommendations to avoid or minimize potential effects to jurisdictional resources. Within the EST, these issues are organized under the following two categories: Navigation and Wetlands.
- Evaluate whether any identified resources can be eliminated from further detailed analysis during the PD&E study phase.
- Identify potential permits, mitigation opportunities, and technical studies necessary to advance transportation projects, as well as identification of other proposed activities within a project area.
- Identify for consideration alternatives that would advance transportation projects through the use of Nationwide or Regional General Permits, or Mitigation Bank or In Lieu Fee Programs, or other information promulgated by the USACE Regulatory Program.
- Inform FDOT OEM and District environmental offices of USACE's initiatives, programs, training opportunities, rule or process changes, and regulations that may impact FDOT projects.
- Provide training and updates to FDOT OEM and District environmental offices on the USACE permit application process, Regional General Permit SAJ-92, RIBITS (Regulatory In lieu fee and Bank Information Tracking System), etc. Attend and participate in ETAT meetings and project coordination meetings.
- Verify that resource data provided by USACE is current in the EST.
- Review project purpose and need and acknowledge understanding or ask for clarification.
- Review and comment on the Methodology Memorandum (MM) and Draft Alternatives Corridor Evaluation Report (ACER) during the Alternative Corridor Evaluation (ACE) process.
- Make recommendations and provide technical assistance to FDOT to support future permit activities.
- Provide expedited review, technical assistance and consultation throughout the PD&E and permitting processes.
- Participate in interagency issue resolution teams, as applicable.
- Participate in monitoring under NEPA assignment, if requested.
- Provide FDOT an opportunity for advanced coordination and/or comment on proposed legislative changes, rule changes, and changes to associated operating manuals.

During ETDM Screenings, USACE ETAT comments and recommendations regarding proposed transportation projects and their potential effects (direct, indirect, and cumulative) must be entered in the EST. FDOT will use USACE's comments and recommendations to support project scoping and to identify coordination needs or additional activities in future project phases.

B. FDOT will provide funding to USACE to adjust or supplement its staff resources in order for USACE to provide expedited review of FDOT projects with qualified review specialist(s) and other personnel. The invoices submitted by USACE shall represent work spent exclusively (100%) on review of FDOT projects, providing expedited project review or coordination, technical assistance, document review, and other authorized activities, as identified in this AOFA.

C. USACE shall review and respond to information contained in FDOT’s Planning and Programming Screens within forty-five (45) days of electronic notification that a project is ready for ETAT review. USACE will review project information using available data both internal and external to the EST. For projects in the PD&E phase, USACE shall review and respond to FDOT submissions within thirty (30) or forty-five (45) calendar days depending on the type of requested action. Tables 1, 2, and 3 in the sections below identify activities and project information available during the two ETDM screens and the PD&E phase, which range from a project’s purpose and need to technical reports and environmental documents. In extenuating circumstances when these timeframes may be missed, USACE shall provide a written request for an extension, including justification and new deadline.

D. USACE shall invoice FDOT using the EST’s invoicing module for reimbursable activities conducted during the billing period. Reimbursable activities are only those activities described in this AOFA.

E. USACE shall participate in the ETDM Performance Management Program, which includes quarterly feedback reports and a biennial survey; metrics for these performance reports are identified in the AOFA (see Section 7). USACE shall also attend ETDM-related meetings, as appropriate.

F. The parties to this AOFA act in an independent capacity in the performance of their respective functions under this AOFA; no party shall be construed as the officer, agent, or employee of the other.

G. In no way shall it be construed or implied that FDOT or USACE are by this AOFA intending to abrogate their obligations and duties to comply with their obligations and responsibilities under any federal, state, or local law or regulations, including regulations promulgated under NEPA.

**4.1. Planning Screen**

Upon receipt of the Planning Screen notice, ETAT members review a project’s purpose and need and provide comments about potential project effects to the natural, physical, cultural, and community resources related to their statutory and regulatory authority. ETAT members provide comments about a proposed project based on their expertise, respective agency authority, plans, programs, and technical reports. At the conclusion of the Planning Screen, the ETDM Coordinator publishes the Planning Screen Summary Report. This report serves as feedback to the ETAT members and summarizes key recommendations and results from the screening event.

Table 1 outlines information contained in the EST from various sources, such as, FDOT, MPO, Florida Geographic Data Library (FGDL), and other agencies. It identifies USACE review and comment tasks during the Planning Screen and addresses agency coordination responsibilities.

**Table 1 – Planning Screen Information and Coordination Responsibilities**

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
<ul style="list-style-type: none"> <li>■ Project information (including but not limited to):                             <ul style="list-style-type: none"> <li>■ Purpose and Need</li> <li>■ Project description</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>■ In non-MPO areas, FDOT establishes the purpose and need and logical termini.</li> <li>■ In MPO and non-MPO areas, FDOT assists in developing the</li> </ul>	<ul style="list-style-type: none"> <li>■ Assign project reviewer.</li> <li>■ Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED (if provided), EST GIS analysis, project and resource maps, and comments from previous activities.</li> </ul>

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
<ul style="list-style-type: none"> <li>▪ Preliminary Environmental Discussion (PED)</li> <li>▪ Agency comments</li> <li>▪ GIS analysis and resource maps (Social and Economic, Cultural, Natural, and Physical)</li> <li>▪ Community characteristics</li> <li>▪ Project limits and logical termini</li> <li>▪ Mobility alternatives</li> <li>▪ Agency plans and programs</li> <li>▪ Agency-specific GIS data</li> </ul>	<p>purpose and need and logical termini for SIS projects.</p> <ul style="list-style-type: none"> <li>▪ Establish an interdisciplinary project team, as appropriate.</li> <li>▪ Develop and disseminate Methodology Memorandum (MM) and resulting Alternative Corridor Evaluation Report (ACER), as applicable.</li> <li>▪ Ensure project information is available for ETAT review.</li> <li>▪ Coordinate with USACE on agency jurisdictional resource issues.</li> <li>▪ Produce Planning Screen Summary Report, which includes:                             <ul style="list-style-type: none"> <li>▪ Project Description</li> <li>▪ Purpose and need</li> <li>▪ PED</li> <li>▪ Agency comments, issues, and recommendations for potential direct, indirect, and cumulative effects at the resource level</li> <li>▪ GIS mapping and analysis</li> <li>▪ Supplemental information supporting the project record</li> <li>▪ Summary Degrees of Effect (SDOE) and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>▪ Summary of public involvement comments and identification of any community desired project features</li> <li>▪ Identification of anticipated technical studies, permits, and project recommendations</li> <li>▪ Adopt planning products as appropriate, for use in the NEPA process</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Verify that information available in the EST from USACE is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>▪ Review project purpose and need and acknowledge understanding or ask for clarification.</li> <li>▪ Review projects for potential direct and indirect effects to resources under USACE jurisdiction.</li> <li>▪ Submit comments in the EST for each screened project alternative for Navigation and Wetlands issues.</li> <li>▪ Provide comments about potential effects to USACE resources and make recommendations to avoid or address them.</li> <li>▪ If USACE identifies potential direct and/or indirect effects to USACE resources, comment on the type, quality, and sensitivity of the resources involved in relation to their location to the proposed project and related activities. If the project does not impact resources of interest or a detailed evaluation is not necessary during the PD&amp;E Study phase, indicate this as well.</li> <li>▪ Supplement information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>▪ For scoping purposes, provide comments regarding potential cumulative effects to a resource and provide information for FDOT's consideration when evaluating cumulative effects.</li> <li>▪ Provide information about agency plans, studies, regulatory information, or other data that may affect the project or be affected by the project.</li> <li>▪ Provide specific recommendations to address resource concerns which may arise during permitting, such as potential avoidance, minimization, or mitigation opportunities.</li> <li>▪ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>▪ Identify specific activities that FDOT or other ETAT member(s) could complete between Planning and Programming</li> </ul>

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
		<p>Screens to answer questions, address concerns or fill in data gaps (e.g., seasonal studies, preliminary site inspections, or studies to support the permitting process).</p> <ul style="list-style-type: none"> <li>▪ Indicate a Degree of Effect (DOE) for each issue and alternative being reviewed. A DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a USACE resource.</li> <li>▪ Review and respond to a proposed MM, when applicable.</li> <li>▪ Review ACERs, when applicable.</li> <li>▪ Indicate the need for future coordination (e.g., consultation permits, and technical studies).</li> <li>▪ Submit comments via the EST within 45 calendar days of notification.</li> <li>▪ Respond to Cooperating and Participating Agency requests from the Lead Federal Agency (FDOT).</li> <li>▪ Regularly communicate with ETDM Coordinator to exchange information and discuss project matters.</li> <li>▪ Review the Planning Screen Summary Report and provide agency comments, if any, within 30 calendar days of notification.</li> </ul>

#### 4.2. Programming Screen

The Programming Screen builds upon the information produced during the Planning Screen, if applicable (not all projects complete a Planning Screen, see ETDM Manual, Chapter 2). The Programming Screen may initiate the Advance Notification (AN) process, which FDOT uses to inform agencies and other interested parties of a proposed transportation action, as well as Federal Consistency Review (as appropriate), and project scoping [NEPA or State Environmental Impact Reports (SEIR)]. The Programming Screen is required for all qualifying projects (defined in ETDM Manual, Chapter 2) being considered for inclusion in FDOT's Five Year Work Program, or prior to initiation of the PD&E study. During the Programming Screen, ETAT representatives provide technical assistance, comments about potential project effects, acknowledge understanding or ask for clarification of the purpose and need, and assist FDOT in scoping technical studies necessary to satisfy the requirements of the PD&E phase.

FDOT uses the EST to notify agencies and stakeholders to proceed with their review. When applicable, the notice for the Programming Screen begins a 45-day comment period, to allow for the distribution, discussion, and receipt of agency responses consistent with the Programming Screen and Federal Consistency Review. Upon receipt of this notice, all ETAT representatives will review and comment on the information associated with the Programming Screen. At the end of the Programming Screen, the ETDM Coordinator publishes the Preliminary Programming Screening Summary Report to document the initial screening event and the Final Programming Screen Summary Report when a class of action (COA) determination has been made. These reports serve as feedback to the ETAT members and document the results of the screening. The final report also supports

development of a project’s scope of work based on the ETAT reviews, considerations, and recommendations received during the screening and are intended to be adopted as a planning product for use in the NEPA process.

Table 2 below outlines information for which USACE, based on its jurisdictional areas of expertise, has review and comment responsibility during the Programming Screen. It also addresses FDOT and USACE review and coordination responsibilities.

**Table 2 – Programming Screen Information and Coordination Responsibilities**

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
<ul style="list-style-type: none"> <li>▪ Project information (including but not limited to):                             <ul style="list-style-type: none"> <li>▪ Purpose and Need</li> <li>▪ Agency comments</li> <li>▪ Project description</li> <li>▪ PED</li> <li>▪ Refined GIS line work</li> <li>▪ Previous screening results, if applicable</li> <li>▪ Results of preliminary studies</li> <li>▪ GIS analysis and resource maps (Social and Economic, Cultural, Natural, and Physical)</li> <li>▪ Community characteristics</li> <li>▪ Project limits and logical termini</li> <li>▪ Mobility alternatives</li> </ul> </li> <li>▪ AN package</li> <li>▪ Coastal Zone Consistency Determination (only federal projects)</li> <li>▪ Clean Air Act Conformity Designation (only federal projects)</li> <li>▪ Agency plans and programs</li> <li>▪ Agency-specific GIS data</li> </ul>	<ul style="list-style-type: none"> <li>▪ In MPO areas, FDOT assists in developing the purpose and need and logical termini.</li> <li>▪ In non-MPO areas, establishes the purpose and need and logical termini.</li> <li>▪ In MPO and non-MPO areas, FDOT assists in developing the purpose and need and logical termini for SIS projects.</li> <li>▪ Distribute AN package to agencies including all ETAT agencies.</li> <li>▪ Determine type of Environmental Documentation/COA.</li> <li>▪ Establish an interdisciplinary project team, as appropriate.</li> <li>▪ Develop and disseminate MM and resulting ACER, when applicable.</li> <li>▪ Coordination with USACE on agency jurisdictional issues.</li> <li>▪ Invite Cooperating and Participating agencies, as applicable</li> <li>▪ Produce Programming Screen Summary Reports (Preliminary and Final) which include:                             <ul style="list-style-type: none"> <li>▪ Project description</li> <li>▪ Purpose and need</li> <li>▪ PED</li> <li>▪ COA Determination (i.e., Type 2 Categorical Exclusion [CE], Environmental Assessment [EA], Environmental Impact Statement [EIS], or SEIR)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Assign project reviewer.</li> <li>▪ Develop an understanding of the proposed transportation project by reviewing the project description, purpose and need, PED, EST GIS analysis, project and resource maps, and comments from previous activities.</li> <li>▪ Verify that information available in the EST from USACE is the best available. Identify information gaps or data needed to support further evaluation.</li> <li>▪ When applicable, review and comment on AN package and assist with scoping activities. Review project purpose and need and acknowledge understanding or ask for clarification.</li> <li>▪ Review projects for potential direct and indirect effects to resources under USACE jurisdiction.</li> <li>▪ Provide comments about potential effects and recommendations to avoid or minimize effects. If potential direct or indirect effects are identified, comment on the type, quality, and sensitivity of the resources involved in relation to the resources’ location to the proposed project and related activities. Be as specific as possible.</li> <li>▪ Provide comments in the EST for each screened project alternative for the Navigation and Wetlands issues.</li> <li>▪ Comments should not only list resources found within the standard EST buffers, but reflect historical documentation, previous studies, site visits, and personal knowledge of the project area.</li> <li>▪ Supplement information in the EST with additional sources and personal knowledge, such as data gathered from site visits.</li> <li>▪ If the project does not impact resources of interest or a detailed evaluation is not</li> </ul>

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
	<ul style="list-style-type: none"> <li>▪ Cooperating and participating agencies, as appropriate</li> <li>▪ GIS analysis and mapping</li> <li>▪ Agency comments, issues, and recommendations for potential direct, indirect, and cumulative effects</li> <li>▪ Dispute resolution issues, if any</li> <li>▪ SDOE and FDOT ETDM Coordinator comments, including actions to address ETAT agency comments</li> <li>▪ Summary of public involvement activities, comments, and identification of any community desired project features</li> <li>▪ Identification of technical studies, permits, and project recommendations.</li> <li>▪ Adopt planning products, as appropriate, for use in the NEPA process</li> </ul>	<p>necessary during the PD&amp;E phase, indicate this as well.</p> <ul style="list-style-type: none"> <li>▪ For scoping purposes, provide comments regarding potential cumulative effects to a resource to help FDOT determine evaluation requirements.</li> <li>▪ Identify potential resource avoidance and minimization recommendations, issues which may arise during permitting, and mitigation needs based on statutes and regulations.</li> <li>▪ Specifically identify differences in potential jurisdictional resource impacts among alternatives.</li> <li>▪ Identify specific activities that FDOT or other ETAT member(s) could complete after the Programming Screen or during PD&amp;E to answer questions, address concerns or fill in data gaps (e.g., seasonal studies, site inspections and advancing technical studies).</li> <li>▪ Indicate a DOE for each issue and alternative being reviewed. A DOE reflects the magnitude of potential projects effects (direct and indirect effects) caused by a particular alternative to a resource.</li> <li>▪ Review and respond to a proposed MM, when applicable.</li> <li>▪ Review ACERs, when available.</li> <li>▪ Identify the permit review process expected to be used (Standard, Nationwide, or Regional General Permits), anticipated concerns, and information on Mitigation Banks and In Lieu Fee Programs, and other information relevant to the review.</li> <li>▪ Identify required technical studies.</li> <li>▪ Indicate the need for future coordination (e.g., consultation, permits, and technical studies).</li> <li>▪ Request Cooperating or Participating Agency status (see Section 4.4), if USACE deems appropriate, for consideration by the Lead Federal Agency.</li> <li>▪ Respond to Cooperating or Participating Agency requests from the Lead Federal Agency.</li> </ul>

EST (MPO, FDOT, FGDL, Agencies)	FDOT	USACE
		<ul style="list-style-type: none"> <li>▪ Submit comments via the EST within 45 calendar days of notification.</li> <li>▪ Participate in issue resolution, as needed, to assist the ETDM Coordinator in identifying solutions to project concerns.</li> <li>▪ Review the Programming Screen Summary Report and provide agency comments, if applicable, within 30 calendar days of notification.</li> </ul>

### 4.3. Project Development & Environment Phase

During the PD&E phase, FDOT performs preliminary engineering, conducts environmental analysis and public involvement activities, and prepares necessary studies and reports as described in the FDOT PD&E Manual. During this phase, USACE will provide technical assistance upon request by FDOT. The COA determination dictates the type of Environmental Document prepared during the PD&E phase.

Federal environmental documents are developed in compliance with the Council on Environmental Quality (CEQ) regulations implementing NEPA and 23 CFR 771; see PD&E Manual, Part 1, Chapter 2 for more information about environmental COA determinations. For non-federal transportation projects see Part 1, Chapter 10 of the PD&E Manual.

Table 3 outlines information for which USACE has review and comment responsibility during the PD&E phase. It also addresses FDOT and USACE review and coordination responsibilities.

**Table 3 – Project Development & Environment Phase Information and Responsibilities**

FDOT	USACE
<i>Alternatives Analyses</i>	
<ul style="list-style-type: none"> <li>▪ Develop and analyze alternatives.</li> <li>▪ Assess impacts of alternatives.</li> <li>▪ Consult with FDEP regarding potential impacts, avoidance and minimization recommendations, and opportunities for mitigation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review and comment on alternatives and analysis relative to the public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines).</li> <li>▪ Coordinate with FDOT regarding potential impacts, avoidance and minimization recommendations, Best Management Practices (BMPs), and opportunities for mitigation, as requested.</li> </ul>
<i>Technical Reviews</i>	
<ul style="list-style-type: none"> <li>▪ Complete technical studies as appropriate, such as:                             <ul style="list-style-type: none"> <li>▪ Natural Resources Evaluation (NRE)</li> <li>▪ Water Quality Impact Evaluation</li> <li>▪ Endangered Species Biological Assessment</li> <li>▪ Wetlands Evaluation Report (WER)</li> <li>▪ Drainage Report</li> <li>▪ Cultural Resource Assessment (CRA)/FDEP Consultation Letter</li> </ul> </li> <li>▪ Request formal/informal consultation, as appropriate</li> <li>▪ Provide timely responses to Requests for Additional Information</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review, comment, and/or provide recommendations from appropriate agency specialists on relevant technical reports and agreements within 30 calendar days of notification.</li> <li>▪ Review, comment, and/or provide recommendations from appropriate agency specialists on unscreened projects.</li> <li>▪ Provide specific comments to enable the reports to be used for the public interest determination (including, where applicable, a determination of compliance with the Section 404(b)(1) guidelines).</li> </ul>

<b>FDOT</b>	<b>USACE</b>
<ul style="list-style-type: none"> <li>▪ Participate in working groups or other opportunities in support of related initiatives (i.e. construction provision updates)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide technical assistance on matters within USACE’s jurisdictional and regulatory expertise.</li> <li>▪ Identify resources which may be exempt from public disclosure</li> </ul>
<b><i>Type 2 Categorical Exclusion (CE)/Environmental Assessment (EA)/Draft Environmental Impact Statement (DEIS)</i></b>	
<ul style="list-style-type: none"> <li>▪ Incorporate information from technical reports and permits into the Environmental Document.</li> <li>▪ Publish Notice of Intent for EIS, as applicable.</li> <li>▪ Identify, invite, and involve Cooperating and Participating Agencies, as appropriate.</li> <li>▪ Complete: <ul style="list-style-type: none"> <li>▪ Type 2 CE or EA and make publicly available: or</li> <li>▪ DEIS.</li> </ul> </li> <li>▪ Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate.</li> <li>▪ Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review, comment, and/or provide recommendations from appropriate agency specialists on: <ul style="list-style-type: none"> <li>▪ Type 2 CE or EA within 30 calendar days of notification; or</li> <li>▪ Publicly available DEIS within 45 calendar days of notification of availability.</li> </ul> </li> <li>▪ Upon request, provide technical assistance regarding jurisdictional and regulatory resources for use at public hearings.</li> <li>▪ Review and comment on the environmental document, specifically identifying jurisdictional and permit issues within existing regulatory authority.</li> <li>▪ Review and comment on potential impacts to regulatory resources for each alternative</li> <li>▪ Upon request, attend public hearing and participate, as appropriate.</li> </ul>
<b><i>State Environmental Impact Report (SEIR)</i></b>	
<ul style="list-style-type: none"> <li>▪ Incorporate information from relevant technical reports into SEIR.</li> <li>▪ Complete SEIR and make publicly available.</li> <li>▪ Hold public hearing and prepare transcript and certification, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review, comment, and/or provide recommendations related to jurisdictional and regulatory resources from appropriate agency specialists on publicly available SEIR within 30 calendar days of notification.</li> <li>▪ Upon request, attend public hearing and participate, as appropriate.</li> <li>▪ Upon request, provide technical assistance regarding jurisdictional and regulatory resources for use at public hearings.</li> <li>▪ Review and comment on the SEIR, specifically identifying resource and permit issues within regulatory authority.</li> </ul>
<b><i>Finding Of No Significant Impact (FONSI)/Final Environmental Impact Statement (FEIS)</i></b>	
<ul style="list-style-type: none"> <li>▪ Complete and document decisions in FONSI or FEIS.</li> <li>▪ Submit draft FEIS for review to other Lead agencies and/or Cooperating Agencies, and as appropriate to Participating Agencies.</li> <li>▪ Respond to comments.</li> <li>▪ Obtain project permits concurrent with NEPA approval, as appropriate.</li> <li>▪ Determine preferred alternative.</li> <li>▪ Issue Record of Decision (ROD) for FEIS.</li> <li>▪ Location and Design Concept Acceptance.</li> <li>▪ Make FEIS publicly available.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review draft FEIS, as appropriate, if USACE is a cooperating or participating agency within 30 calendar days</li> <li>▪ Review publicly available FEIS within 30 calendar days.</li> </ul>

FDOT	USACE
<i>Environmental Re-evaluation</i>	
<ul style="list-style-type: none"> <li>▪ Consult with FDEP, as appropriate, to address changes to Design/ROW or environmental commitments, which will be updated as necessary</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consult with FDOT as requested to assure continuing compliance with commitments</li> </ul>
<i>Permitting</i>	
<ul style="list-style-type: none"> <li>▪ Consult with USACE, as necessary, to develop and submit Section 10 / Section 404 Permit Applications.</li> <li>▪ Obtain project permits</li> </ul>	<ul style="list-style-type: none"> <li>▪ Perform Section 10 / Section 404 permit reviews and approval functions.</li> </ul>

#### 4.4. Cooperating and Participating Agency

In addition to its review responsibilities under this AOFA, USACE may, as provided by law, serve as a Cooperating or Participating Agency in accordance with 23 U.S.C. §139 as defined in NEPA and coordinate with FDOT on federal projects.

#### 4.5. Training and Educational Programs

FDOT will provide and USACE will attend training to ETAT members to explain the ETDM process, PD&E process, the use of the EST and various aspects of the transportation delivery process. Other training opportunities may be made available to ETAT representatives and FDOT staff regarding natural, historic, and sociocultural resource issues as available or needed. ETAT representatives, to the extent feasible, are expected to attend trainings.

USACE, if requested, will provide training opportunities to FDOT regarding its regulations, the assessment and management of its resources, and the implementation of its regulatory programs as they affect transportation development.

#### 4.6. Periodic Agency Coordination

ETAT representatives will meet periodically with ETDM Coordinators and FDOT OEM to coordinate and discuss ETDM program activities, including, without limitation, workload, staffing, resource needs, and agency initiatives and directives. USACE will advise FDOT regarding changes to its guidance and regulations. At these meetings and any District-wide ETAT meetings, the participants will exchange information related to the efficiency of the ETDM process, ETAT agency sponsored training opportunities, and proposed changes to law. Additionally, participants shall discuss implications to FDOT, and/or resource agencies from rule changes, program and policy updates, and development of management plans and procedures. USACE will coordinate the aforementioned activities with FDOT early in the development efforts, as deemed appropriate.

### Section 5. Personnel

#### 5.1. ETAT Representative

USACE agrees to provide ETAT representatives to support the ETDM process. Agency ETAT representatives coordinate and perform timely agency reviews of FDOT projects with respect to the agency's statutory and regulatory requirements. ETAT representatives are responsible for certain review and coordination tasks and functions, as detailed in Tables 1, 2, and 3 above.

## 5.2. FDOT ETDM Coordinator

Each of FDOT's seven District offices and Florida's Turnpike Enterprise (FTE) have identified an ETDM Coordinator responsible for administering the ETDM process, as specified in Tables 1, 2, and 3 above. FDOT ETDM Coordinator duties are further described in the ETDM Manual.

If the ETDM Coordinators are unable to perform their duties, the applicable FDOT District Office or FTE will identify an alternate ETDM Coordinator to complete the FDOT/FTE responsibilities in the agreed upon timeframes.

## Section 6. Technology Requirements

The successful implementation of the ETDM process relies on the quality of information within the EST. As such, each agency's ETAT representative will serve as the agency contact and be responsible for obtaining digital information about the agency's jurisdictional resources, as well as for ensuring that their agency's information remains current and available to the University of Florida GeoPlan Center for use with the ETDM Process. Upon request, USACE will attempt to identify new or updated resource information from agency plans, initiatives, research projects, and field reviews relevant to the responsibilities under this AOFA and shall make them available to the FGDL. The ETAT agency shall provide digital information to the GeoPlan Center at no cost. The information will include metadata, documentation that describes the format, intent, and source material used to develop and maintain the information. ETAT representatives will coordinate with the GeoPlan Center to ensure that transmitted data meets the quality and format protocols of the EST.

ETAT representatives shall have a computer with internet connectivity adequate to ensure the effective use of the EST, to attend virtual meetings, and to communicate with the Department and other ETAT members.

## Section 7. Performance Standards

ETAT agency performance standards shall be based on the fulfillment of agency responsibilities. In assessing the achievement of these standards, FDOT may consider the agency's level of involvement, quality of reviews, number of revisions, number of requests for additional substantive information, interagency communication and coordination, and review delays, as well as actions taken to expedite the Planning, Programming, PD&E and permitting. FDOT may also consider whether the agency provides (1) specific information about data needs to achieve compliance with the statutory and regulatory requirements contained in Appendix A, (2) documentation of the consultation process, and (3) documentation of commitments (including future coordination, avoidance and minimization strategies, and mitigation opportunities) to protect resources.

Performance standards established for FDOT and ETAT agencies include but are not limited to:

- ETAT agency review of Planning and Programming Screens within 45 calendar days of notification
- FDOT response to comments and inquiries within 30 calendar days
- FDOT response to requests for additional information within 30 calendar days
- Establishment of quality assurance protocols for digital information
- Collaborative development of task and/or annual work plan which establishes priorities, milestones, deliverables and schedule.
- Completion of ETDM Issue Resolution Process within 120 calendar days, if applicable
- Review of requested environmental documents and technical reports within 30 calendar days, with the exception of the DEIS, which is 45 calendar days once approved for public availability

ETAT members are expected to participate in FDOT-requested activities, as outlined above. ETAT members are also expected to provide meaningful, substantive evaluations and comments regarding their jurisdictional areas with recommendations to address resource issues and facilitate timely issuance of permits. The agency's performance will be tracked and monitored in

the ETDM Performance Management Program. FDOT will provide the agency with periodic performance reports from the ETDM Performance Management Program.

## **Section 8. ETDM Issue Resolution Process**

To timely advance projects, the parties agree to the ETDM Issue Resolution process described herein for projects with anticipated substantial adverse effects. This process seeks to find solutions to complex issues among agencies by identifying mutually agreeable activities or conditions that will address a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases as detailed analysis begins and more information becomes available. Participation in the ETDM process does not abrogate or limit USACE's authority or responsibility to protect resources over which it has jurisdiction or authority or require it to act in a way contrary to law, regulation, rules, policy or practice.

A strong commitment exists among the participants in the ETDM process to resolve issues within the ETAT, prior to elevating them to higher level management (see Figure 2). To facilitate meeting this commitment, potential disputes should be addressed as early as possible to make the best use of agency skills and resources. Projects with unresolved issues following the ETAT review and publication of the Preliminary Programming Screen Summary Report require commencement or continuation of the ETDM issue resolution process.

The informal issue resolution process begins when the ETDM Coordinator in consultation with the OEM Project Development Coordinator assigns a *Potential Dispute* SDOE in the Planning Screen or *Issue Resolution Process Required* SDOE during a Programming Screen review. When assigning the SDOE, the ETDM Coordinator uses all known information including comments and DOEs from ETAT members. The ETDM Coordinator reviews the potential dispute commentary to determine its consistency with the definition of *Potential Dispute* or *Issue Resolution Process Required* (see the ETDM Manual, Chapters 3 and 4) and in conjunction with the disputing agency's regulatory authority.

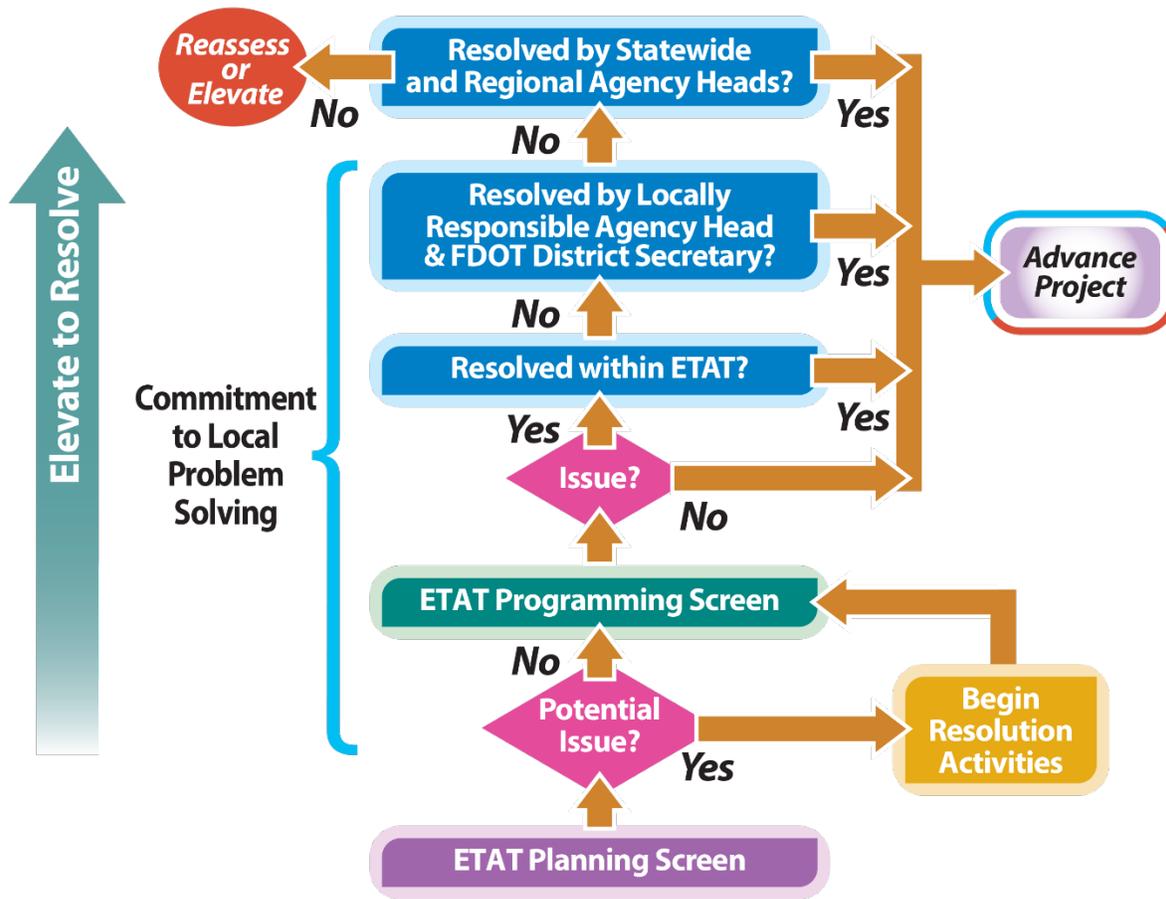
An ETAT representative may, based on its jurisdictional or regulatory authority, flag a project as potentially needing issue resolution with the following triggers:

- Project is considered to be unpermittable (applicable to permitting agencies).
- Project is identified to be contrary to a state or federal resource agency's program, plan, or initiative (including Florida's Coastal Management Program).
- Project has the potential for significant environmental cost (e.g., monetary, environmental effects, or quality of life).
- Project Purpose and Need is questioned (applicable to OEM only).

Initially, the ETDM Coordinator works with the appropriate ETAT representative(s) to informally resolve the disputed issue(s) at the agency staff level before elevating the discussion to the Formal Issue Resolution process. The agency heads (or governing board, as applicable) will make the final decision on how to address unresolved issues.

Any agreements, understandings, and/or recommendations resulting from the ETDM issue resolution process in the Planning or Programming Screens are documented and accompany the project as it advances into PD&E. If there are unresolved issues for federal projects undergoing NEPA review, then the "issue resolution" process set out in **23 U.S.C. § 139**, will be applicable. The process in **23 U.S.C. § 139** establishes a series of forums for issues arising in the environmental review process to be resolved, and if not resolved, to which the issues would then advance, including potential financial penalties for unexcused delays by participating agencies.

Figure 2 – Issue Resolution Process



NOTE: Issue Resolution identifies mutually agreeable activities or conditions addressing a resource concern while meeting the transportation need. Issue resolution activities may continue through future project delivery phases.

## Section 9. Financial Provisions

A. The parties have agreed that the services provided under this AOFA will be subject to advance payment. Specifically, FDOT will provide advance funding for services described in Section 4 of this AOFA and such advances will be provided in quarterly installments throughout the term of this AOFA. The total allocation of funding under this AOFA is **\$3,182,500.00** for a 5-year term. The Budget for the term of this AOFA is included as Appendix C.

1. FDOT’s initial installment payment may not be released prior to the parties’ execution of this Agreement and the USACE’s submittal of an invoice for advance payment.

2. USACE will submit an invoice for the initial advance funding payment within seven (7) days of the effective date of this AOFA. FDOT will make payment via electronic transfer within twenty (20) days of receiving the invoice for the initial advance funding payment, subject to fiscal year funding in the FDOT’s Adopted Work Program.

3. To support the timely availability of subsequent installments, USACE shall at a minimum invoice FDOT every ninety (90) days for costs incurred for completed activities under this AOFA, but no more than monthly. The amount advanced, plus interest earnings shall be deducted on the latter month’s invoices(s).

B. At least twenty-one (21) days before the start of each quarter, USACE will provide FDOT with a cost invoice, consistent with the budget estimates specified in Appendix C, that provides a budget estimate of costs anticipated to be

incurred by USACE for the next quarter. Unless incomplete or disputed, upon receipt of USACE's invoice, FDOT agrees to compensate USACE the total amount specified in the Invoice. Incomplete or disputed invoices shall be returned to USACE for correction prior to FDOT making an advance payment. Payments by FDOT will be made by electronic funds transfer.

C. USACE shall use the funds provided under this AOFA to defray the actual costs incurred by USACE performing the work under this AOFA, including labor costs, employee benefits, Federal travel allowance, training, and other direct costs. All training and travel must be related to FDOT project review and the ETDM process and lodging/hotel expense shall not exceed \$175 per night without first receiving authorization from FDOT. Non-routine or non-project related travel or training requests for out of state travel by USACE must be submitted one month in advance or as soon as practicable and receive written or electronic preapproval from FDOT's OEM.

D. USACE will not expend funds provided by FDOT for costs associated with the review of USACE's work undertaken by supervisors or other persons within USACE in the decision-making chain of command; however, if a supervisor is performing staff work and not supervisory oversight, funds may be used. USACE will not expend funds provided by FDOT to defray the costs of activities related to the USACE's enforcement. Further, the Corps will not expend funds provided by FDOT to continue activities for FDOT should a lapse in Federal appropriations result in a shutdown or furlough for the ETAT personnel.

E. Invoices shall be submitted by USACE in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable and verifiable units of deliverables as established in Section 4. Invoices will be entered into the EST's invoicing module and must list salaries, benefits, overhead, travel, expenses and other indirect costs, including back-up documentation and a status report that lists the number of hours spent working on FDOT projects, project review tasks, and technical assistance provided. USACE agrees to coordinate with OEM prior to conducting any activity not explicitly defined in this AOFA to ensure funding eligibility. FDOT's OEM will provide instructions and training for using the EST's invoicing module and further guidance through the Funded Position Reference Handbook. Invoicing for travel expenses authorized by this AOFA shall be submitted on FDOT's *Travel Form No. 300-000-06*.

F. Supporting documentation for completion of activities identified in Tables 1, 2 and 3 shall be maintained to establish that the USACE has satisfied its review and coordination activities and may be relied upon by FDOT for evaluation of those performance measures described in Section 7 of this AOFA.

G. If the USACE's actual costs for providing the agreed upon level of service will at any time during the term of the AOFA exceed the amount of funds provided, USACE will notify FDOT at least thirty (30) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. FDOT will either increase the total funding amount through an amendment to this AOFA or agree, in writing, to a reduced level of service.

H. USACE shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this AOFA shall be maintained and made available upon request to FDOT at all times during the period of this AOFA and for six (6) years after final payment is made. Copies of these documents and records shall be furnished to FDOT upon request. Records of costs incurred include USACE's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by FDOT for a proper audit of costs.

I. The provisions of Section 339.135(6)(a), F.S., are hereby incorporated:

The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained

shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.

J. FDOT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

## **Section 10. Duration of Performance, Evaluation, and Implementation of the Agreement**

A. The term of this AOFA shall commence upon signature by all parties or December 1, 2021, whichever comes later and terminate five (5) years from date of signature, whichever comes later, unless terminated sooner in accordance with Section 10(B) below. The AOFA may be amended by mutual consent of the parties as provided in Section 13. The payment for associated work shall be inclusive of all work performed up to and including the date of expiration or termination. This AOFA is subject to the availability of funds.

B. Any party may terminate this AOFA upon sixty (60) days written notice to the Project Officers listed in Section 11, provided that the party requesting termination has provided notice of the reasons for termination and sufficient opportunity for remedy.

C. At least once every three years, USACE and FDOT shall review and evaluate activities contemplated under this AOFA, formulate suggestions for process improvements, and determine whether it should be revised, renewed, or canceled to review and evaluate activities contemplated under this AOFA and formulate suggestions for process improvements. USACE and FDOT shall participate in the ETDM Performance Survey and subsequent meetings to discuss the findings.

D. On a quarterly basis FDOT will issue from its Performance Management Program an electronic report measuring USACE's performance under this AOFA.

E. The AOFA shall supersede any prior understanding, agreement, memorandum, letter, or other written or oral arrangement between the parties relating to the matters covered herein.

F. Should disagreement arise on the interpretation of the provisions of this AOFA, or amendments and/or revisions thereto, that cannot be resolved at the staff level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## **Section 11. Project Officers**

### **United States Army Corps of Engineers**

Andrew Kizlauskas or designee  
Regulatory Division  
415 Richard Jackson Boulevard, Suite 411  
Panama City Beach, FL 32407-3687  
Tel: (850) 763-0717 x8  
Email: [Andrew.A.Kizlauskas@usace.army.mil](mailto:Andrew.A.Kizlauskas@usace.army.mil)

### **Florida Department of Transportation**

Peter McGilvray or designee  
Florida Department of Transportation  
605 Suwannee Street, MS 37  
Tallahassee, Florida 32399-0450  
Tel: (850) 414-5330  
Fax: (850) 414-4443  
Email: [Peter.McGilvray@dot.state.fl.us](mailto:Peter.McGilvray@dot.state.fl.us)

**Section 12. Mandatory Provision**

During the performance of this AOFA, the parties agree they will not discriminate against any person because of race, color, religion, sex, or national origin.

**Section 13. Modification of Agreement**

Any changes, amendments, corrections, or additions to this AOFA, shall be in writing and shall be executed and approved by the project officers (or their designees) listed in Section 11, unless the modifications expand the Statement of Work or budget, which will require the office of the officials (or their designees) who executed and approved this AOFA and shall become effective upon signature of all parties in the same manner as this AOFA. This AOFA can also be extended by mutual agreement of all parties and recorded in writing.

**Section 14. Rights of Others**

Nothing in this AOFA, expressed or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this AOFA.

**Section 15. Entire Agreement**

This AOFA constitutes the entire agreement between the parties relating to the subject matter herein. There exist no representations or warranties other than those set forth herein.

**Section 16. Knowing and Voluntary Participation of Parties**

Each party fully participated in the drafting of this AOFA and understands its rights and obligations hereunder, and is signing this AOFA freely and voluntarily, intending to be bound by it.

**Section 17. Signatures**

The parties may execute this AOFA in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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 0253CA68D3D84A8...  
 Signature \_\_\_\_\_ 12/3/2021 | 2:42 PM EST  
 Date

Kevin J. Thibault, P.E., Secretary  
Florida Department of Transportation

BOOTH.JAMES.LAFA  
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 BOOTH.JAMES.LAFAYETTE.1186  
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 Date: 2021.12.01 21:57:33 -05'00'  
 Signature \_\_\_\_\_ Date

James L. Booth  
Colonel, U.S. Army  
District Commander

Legal Review:

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 Signature \_\_\_\_\_ 12/2/2021 | 12:21 PM EST  
 Date

**Appendix A. Applicable Laws, Regulations, Executive Orders and Agency Guidance**

Agency	Citation
<p><i>Florida Department of Transportation</i></p>	<p><b>FEDERAL STATUTES</b></p> <ul style="list-style-type: none"> <li>▪ 7 United States Code (U.S.C.) §§ 4201-4209, Farmland Protection Policy Act (FPPA),</li> <li>▪ 16 U.S.C. 470 et seq, National Historic Preservation Act of 1966, as amended</li> <li>▪ 16 U.S.C. §§ 470(aa)-(mm), Archeological Resources Protection Act of 1979,</li> <li>▪ 16 U.S.C. §§ 1531-1544, Endangered Species Act of 1973</li> <li>▪ 16 U.S.C. §§ 1361-1423h, Marine Mammal Protection Act</li> <li>▪ 16 U.S.C. §§ 757a-757f, Anadromous Fish Conservation Act</li> <li>▪ 16 U.S.C. §§ 661-667d, Fish and Wildlife Coordination Act</li> <li>▪ 16 U.S.C. §§ 703-712, Migratory Bird Treaty Act</li> <li>▪ 16 U.S.C. §§ 1271-1287, Wild and Scenic Rivers Act,</li> <li>▪ 16 U.S.C. §§ 1451-1466, Coastal Zone Management Act,</li> <li>▪ 16 U.S.C. §§ 1801-1891d, Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, with Essential Fish Habitat requirements at 16 U.S.C. § 1855(b)(2)</li> <li>▪ 16 U.S.C. §§ 3501-3510, Coastal Barrier Resources Act,</li> <li>▪ 16 U.S.C. § 3901 and § 3921, Emergency Wetlands Resources Act,</li> <li>▪ 23 U.S.C. § 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and implementing regulations at 23 C.F.R. part 774</li> <li>▪ 23 U.S.C. § 119(g) and § 133(b)(14), Wetlands Mitigation,</li> <li>▪ 54 U.S.C. §§ 200302-200310, Land and Water Conservation Fund (LWCF) Act</li> <li>▪ 23 U.S.C. 101, <i>et seq.</i>, Highways</li> <li>▪ 23 U.S.C. 109(h), Highways – Standards, as amended</li> <li>▪ 23 U.S.C. § 139, Efficient Project Reviews for Environmental Decision Making</li> <li>▪ 23 U.S.C. § 168, Planning and Environmental Linkages, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135</li> <li>▪ 23 U.S.C. § 169 Programmatic Mitigation Plans, with the exception of those FHWA responsibilities associated with 23 U.S.C. §§ 134 and 135</li> <li>▪ 25 U.S.C. §§ 3001-3013; 18 U.S.C. § 1170, Native American Grave Protection and Repatriation Act (NAGPRA),</li> <li>▪ 33 U.S.C. §§ 1251-1387 (Sections 319, 401, and 404), Clean Water Act,</li> <li>▪ 33 U.S.C. §§ 403, Rivers and Harbors Act of 1899,</li> <li>▪ 42 U.S.C. §§ 300f-300j-26, Safe Drinking Water Act (SDWA),</li> <li>▪ 42 U.S.C. § 1996, American Indian Religious Freedom Act,</li> <li>▪ 42 U.S.C. 2000d-2000d-7, Title VI of the Civil Rights Act of 1964, as amended</li> <li>▪ 42 U.S.C. §§ 4001-4130, Flood Disaster Protection Act,</li> <li>▪ 42 U.S.C. 4321-4370h, National Environmental Policy Act (NEPA) of 1969, as amended</li> <li>▪ 42 U.S.C. §§ 4901-4918, Noise Control Act of 1972</li> <li>▪ 42 U.S.C. §§ 9601-9675, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)</li> <li>▪ 42 U.S.C. §§ 9671-9675, Superfund Amendments and Reauthorization Act (SARA)</li> <li>▪ 42 U.S.C. §§ 6901-6992k, Resource Conservation and Recovery Act (RCRA),</li> <li>▪ 42 U.S.C. §§ 7401-7671q, Clean Air Act with the exception of project level conformity determinations (42 U.S.C. 7506)</li> </ul>

Agency	Citation
	<ul style="list-style-type: none"> <li>■ 42 U.S.C. 12131-12165, Title II of the Americans with Disabilities Act of 1990, as amended</li> <li>■ 49 U.S.C. 4601-4655, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended</li> <li>■ 49 U.S.C. §§ 47521-47534, Airport Noise and Capacity Act of 1990</li> <li>■ 49 U.S.C. 101, <i>et seq.</i>, Transportation</li> <li>■ 49 U.S.C. 303, Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites; Section 4(f) of the USDOT Act of 1966, as amended</li> <li>■ 54 U.S.C. § 306101 et seq., National Historic Preservation Act of 1966, as amended</li> <li>■ 54 U.S.C. §§ 312501-312508, Preservation of Historical and Archaeological Data,</li> <li>■ Public Law 112-141, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), as amended</li> </ul> <p><b>CODE OF FEDERAL REGULATIONS</b></p> <ul style="list-style-type: none"> <li>■ 23 C.F.R. 450, Planning Assistance and Standards</li> <li>■ 23 C.F.R. 650, Bridges, Structures and Hydraulics</li> <li>■ 23 C.F.R. 771, Environmental Impact and Related Procedures</li> <li>■ 23 C.F.R. 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise</li> <li>■ 23 C.F.R. 774, Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(F))</li> <li>■ 23 C.F.R. 777, Mitigation of Impacts to Wetlands and Natural Habitat</li> <li>■ 36 C.F.R. 800, Protection of Historic Properties</li> <li>■ 40 C.F.R. 1500-1508, Council on Environmental Quality</li> <li>■ 49 C.F.R. 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs</li> </ul> <p><b>EXECUTIVE ORDERS</b></p> <ul style="list-style-type: none"> <li>■ E.O. 11990, Protection of Wetlands/USDOT Order 5660.1A, Preservation of the Nation's Wetlands</li> <li>■ E.O. 11988, Floodplain Management, (except design matters and determinations that significant encroachment is the only practicable alternative under 23 C.F.R. parts 625 and 650)</li> <li>■ E. O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations</li> <li>■ E.O. 13112, Invasive Species, as amended by Executive Order 13286/E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency</li> </ul> <p><b>AGENCY GUIDANCE</b></p> <ul style="list-style-type: none"> <li>■ USDOT Order 5610.1C, Procedures Considering Environmental Impacts</li> <li>■ USDOT Order 5650.2, Floodplain Management and Protection</li> <li>■ FHWA Technical Advisory 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(F) Documents</li> </ul> <p><b>FLORIDA STATUTES</b></p> <ul style="list-style-type: none"> <li>■ Chapter 334, Florida Statutes (F.S.), Transportation Administration</li> <li>■ Chapter 335, F.S., State Highway System</li> </ul>

Agency	Citation
	<ul style="list-style-type: none"> <li>▪ Chapter 336, F.S., County Road System</li> <li>▪ Chapter 337, F.S., Contracting; Acquisition, Disposal, and Use of Property</li> <li>▪ Chapter 338, F.S., Florida Intrastate Highway System and Toll Facilities</li> <li>▪ Chapter 339 F.S., Transportation Finance and Planning</li> </ul>
<i>Army Corps of Engineers</i>	<p><b>FEDERAL STATUTES</b></p> <ul style="list-style-type: none"> <li>▪ Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401)</li> <li>▪ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)</li> <li>▪ Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408)</li> <li>▪ Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)</li> <li>▪ Section 404 of the Clean Water Act (33 U.S.C. 1344)</li> <li>▪ The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)</li> </ul> <p><b>CODE OF FEDERAL REGULATIONS</b></p> <ul style="list-style-type: none"> <li>▪ 33 C.F.R. 320, General Regulatory Policies</li> <li>▪ 33 C.F.R. 321, Permits for Dams &amp; Dikes in Navigable Waters of the U.S.</li> <li>▪ 33 C.F.R. 322, Permits for Structures in or Affecting Navigable Waters of the U.S.</li> <li>▪ 33 C.F.R. 323, Permits for Discharges of Dredged or Fill Material Into Waters of the U.S.</li> <li>▪ 33 C.F.R. 324, Permits for Ocean Dumping of Dredged Material</li> <li>▪ 33 C.F.R. 325, Processing of Department of the Army Permits</li> <li>▪ 33 C.F.R. 326, Enforcement</li> <li>▪ 33 C.F.R. 327, Public Hearing</li> <li>▪ 33 C.F.R. 328, Definition of Waters of the United States</li> <li>▪ 33 C.F.R. 329, Definition of Navigable Waters</li> <li>▪ 33 C.F.R. 330, Nationwide Permit Program</li> <li>▪ 33 C.F.R. 331, Administrative Appeal Process</li> <li>▪ 33 C.F.R. 332, Compensatory Mitigation for Losses of Aquatic Resources</li> <li>▪ 33 C.F.R. 334, Danger Zone and Restricted Areas (Procedures)</li> </ul> <p><b>PRESIDENTIAL DIRECTIVES AND EXECUTIVE ORDERS</b></p> <ul style="list-style-type: none"> <li>▪ Executive Order 1 1990 - Protection of Wetlands</li> <li>▪ Executive Order 11988 - Floodplain Management</li> <li>▪ Presidential Wetland Policy 1993</li> <li>▪ Reaffirmation of the Presidential Wetland Policy 1995</li> </ul>

## **Appendix B. USACE Professional Qualifications**

USACE ETAT position(s) funded under this AOFA shall possess the knowledge and skills necessary to meet and maintain the professional standards outlined below:

- Working knowledge of USACE's statutory and regulatory authority as outlined in Appendix A of this AOFA, including but not limited to the Agency's jurisdictional resource issues, resource management, policies, guidelines, and protection initiatives.
- Understanding of USACE's role in reviewing transportation projects and related technical reports, including Wetland Evaluation Reports and Drainage Reports.
- Working knowledge of the ETDM and the NEPA processes, the Rivers and Harbors Act, the Clean Water Act, the Marine Protection Research and Sanctuaries Act, the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act; and how provisions of these acts and their implementing rules and regulations affect the planning and construction of transportation infrastructure.
- Working knowledge of FDOT PD&E procedures and documents.
- Ability to review, understand, and relate their area of expertise to an analysis of potential jurisdictional resource impacts from transportation projects.
- Specialized experience and/or education in wetlands, ecosystem management, environmental engineering or other related Environmental Science.

### Appendix C. Budget

Subject to state and federal appropriation and budget authority, the Department will establish a budget for USACE to participate in the AOFA. Funding is anticipated to defray the costs of three full time equivalent positions to serve as regional ETAT representatives.<sup>1</sup> Allocation of staff resources to fulfill this AOFA will remain at the discretion of USACE.

Year 1 (December 1, 2021 – November 30, 2022) .....	\$636,500.00
Year 2 (December 1, 2022 – November 30, 2023) .....	\$636,500.00
Year 3 (December 1, 2023 – November 30, 2024) .....	\$636,500.00
Year 4 (December 1, 2024 – November 30, 2025) .....	\$636,500.00
Year 5 (December 1, 2025 – November 30, 2026) .....	\$636,500.00
 Total Budget (5 Calendar Years) .....	 \$3,182,500.00

Advance Payment Schedule per Quarter

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Year 1	\$159,125.00	\$159,125.00	\$159,125.00	\$159,125.00
Year 2	\$159,125.00	\$159,125.00	\$159,125.00	\$159,125.00
Year 3	\$159,125.00	\$159,125.00	\$159,125.00	\$159,125.00
Year 4	\$159,125.00	\$159,125.00	\$159,125.00	\$159,125.00
Year 5	\$159,125.00	\$159,125.00	\$159,125.00	\$159,125.00

**FDOT Accounting Information:**

Business Partner Network (BPN)/DUNS: 809397102

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<sup>1</sup> Funding is based on the average hourly rate for up to three senior, experienced, employees to perform the AOFA tasks. The Corps will assign a minimum of one full-time employee to serve as USACE’s ETAT member and may assign additional qualified USACE staff resources to perform duties described in the AOFA. Use of additional staff resources require prior written authorization by OEM before work begins and hours are billed against the AOFA. Any invoices submitted to FDOT under the AOFA will be based on the actual hours and actual salary rate of each employee that worked on the FDOT tasks. Funds provided to USACE under this AOFA are to defray the expenses of salaries and associated benefits, including the pro rata cost of necessary equipment, supplies, office space, overhead, and training and to reimburse reasonable travel expenses.